

From: Lucas Hernandez do Vale Martins <lucas@valemartins.com>

Sent: Monday, December 30, 2019 10:07 AM

To: Koumas, Peter <Peter.Koumas@wendys.com>

Cc: Green, Kerry <Kerry.Green@wendys.com>; Kaffenbarger, Kris <Kris.Kaffenbarger@wendys.com>; Andrew Levy <alevy@starboardwendys.com>; ckelleher@auspexcapital.com; Ribas, Carlos <Carlos.Ribas@wendys.com>; Vidra, Kirk <Kirk.Vidra@wendys.com>; Alves, Carlos <Carlos.Alves@wendys.com>; marcel@infinityservices.com.br; In Hee Cho <inhee@ldr.com.br>

Subject: Re: [EXT] Re: Brazil closure approval

Hi Peter,

The closure resolution needs to be signed along with the financial resolution and credit agreement.

Therefore we need the whole pack.

This is Andrew and Marcel's position.

Best Regards.

Lucas Hernandez do Vale Martins

Vale Martins - Advocacia

Rua Joaquim Floriano, 888 - Cj. 101

Itaim Bibi - São Paulo/SP - Brasil - CEP 04534-003

(55 11) 3071-2173

www.valemartins.com

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Em seg., 30 de dez. de 2019 às 13:36, Koumas, Peter <Peter.Koumas@wendys.com> escreveu:

Hi Lucas – What exactly are you looking for to be circulated? We are not in a position to send around the new credit agreement, which will be used to fund the liquidation expenses, as we are still working through drafting that as well as resolutions within our Netherlands entity. Are you looking for changes in the closure resolution?

Thanks

From: Lucas Hernandez do Vale Martins <lucas@valemartins.com>
Sent: Monday, December 30, 2019 11:14 AM
To: Green, Kerry <Kerry.Green@wendys.com>
Cc: Kaffenbarger, Kris <Kris.Kaffenbarger@wendys.com>; Andrew Levy <alevy@starboardwendys.com>;
ckelleher@auspexcapital.com; Koumas, Peter <Peter.Koumas@wendys.com>; Ribas, Carlos
<Carlos.Ribas@wendys.com>; Vidra, Kirk <Kirk.Vidra@wendys.com>; Alves, Carlos <Carlos.Alves@wendys.com>;
marcel@infinityservices.com.br; In Hee Cho <inhee@ldr.com.br>
Subject: Re: [EXT] Re: Brazil closure approval

Hi All,

Any chance of having this circulated today?

I am alone in the office just waiting for it before closing down the door and leaving for end-year recess.

Best Regards.

Lucas Hernandez do Vale Martins

Vale Martins - Advocacia

Rua Joaquim Floriano, 888 - Cj. 101

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Em seg., 30 de dez. de 2019 às 09:43, Lucas Hernandez do Vale Martins <lucas@valemartins.com> escreveu:

Hi Kerry and all,

I have been into some calls with Andrew and Marcel over the weekend.

Please see below the considerations over the items below, in red.

Best!

All,

I know that In Hee had sent a message to Lucas last night as to the four points set out below. I'm just making sure that these points are received and shared. This concerns the funds for wind-down that Wendy's Netherlands B.V. (not a quotaholder) is preparing to send next week:

1. The proceeds WBR needs to receive for wind down may only be provided through equity by its quotaholders, or by means of debt. For this reason, a loan agreement is being considered. **No problems with this item.**
2. The Lender is considering this will be an unsecured loan transaction – we will position this as the lowest priority of debt and make sure that is reflected in the resolution for the loan as well as the loan documentation. **Starboard and Infinity are not sure what does it mean "lowest priority of debt". Priorities can be changed at any time, and a lowest priority now may become a 1st priority next year, for example. The correct would be a statement where WBR owns the debt, but Wendy's Netherlands Holdings B.V. (the actual quotaholder) is the sole and exclusive guarantor. This is what the parties have agreed upon, that neither Starboard and Infinity would participate in the debts arising from the Wind-down.**
3. Wendy's entity to provide the loan has no quotaholding relationship with WBR. **As the other loans, this was clear from the beginning.**

4. Last, any document (or statement in a resolution) formalizing exemption of liability of WBR or immediately forgiving that loan, will trigger a significant tax obligation to WBR, under the Brazilian legislation, so we cannot add language to this effect in any resolution. **Maybe there has been some miscommunication here. A waiver of the debt was never requested. WBR will owe the debt. However this debt shall be only secured Wendy's Netherlands Holdings B.V. (the actual quotaholder) and clearly stated that it may not be charged from Infinity and Starboard in any case.**

Please let me know if you should have any questions.

Thank you,

Kerry

Lucas Hernandez do Vale Martins

Vale Martins - Advocacia

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Em sáb., 28 de dez. de 2019 às 19:27, Green, Kerry <Kerry.Green@wendys.com> escreveu:

All,

I know that In Hee had sent a message to Lucas last night as to the four points set out below. I'm just making sure that these points are received and shared. This concerns the funds for wind-down that Wendy's Netherlands B.V. (not a quotaholder) is preparing to send next week:

1. The proceeds WBR needs to receive for wind down may only be provided through equity by its quotaholders, or by means of debt. For this reason, a loan agreement is being considered.
2. The Lender is considering this will be an unsecured loan transaction – we will position this as the lowest priority of debt and make sure that is reflected in the resolution for the loan as well as the loan documentation.
3. Wendy's entity to provide the loan has no quotaholding relationship with WBR.
4. Last, any document (or statement in a resolution) formalizing exemption of liability of WBR or immediately forgiving that loan, will trigger a significant tax obligation to WBR, under the Brazilian legislation, so we cannot add language to this effect in any resolution.

Please let me know if you should have any questions.

Thank you,

Kerry



Kerry Renker Green

Associate General Counsel – Global Franchise

The Wendy's Company

One Dave Thomas Blvd. • Dublin, OH • 43017

O : 614-764-3123 • C : 614-940-4824 • E : kerry.green@wendys.com



SAVE A TREE AND SHARE YOUR SCREEN.



From: Kaffenbarger, Kris <Kris.Kaffenbarger@wendys.com>

Sent: Saturday, December 28, 2019 4:56 PM

To: Andrew Levy <alevy@starboardwendys.com>

Cc: ckelleher@auspexcapital.com; Koumas, Peter <Peter.Koumas@wendys.com>; Green, Kerry <Kerry.Green@wendys.com>; Ribas, Carlos <Carlos.Ribas@wendys.com>; Vidra, Kirk <Kirk.Vidra@wendys.com>; Alves, Carlos <Carlos.Alves@wendys.com>; Lucas Hernandez do Vale Martins <luca@valemartins.com>; marcel@infinityservices.com.br

Subject: Re: [EXT] Re: Brazil closure approval

Thanks and take care.

Lucas and Marcel-the Wendy's team will be on the call at 5:00 pm ET.

877-361-4628

P/c 1717987

Kris

From: Andrew Levy <alevy@starboardwendys.com>
Sent: Saturday, December 28, 2019 4:53 PM
To: Kaffenbarger, Kris
Cc: ckelleher@auspexcapital.com; Koumas, Peter; Green, Kerry; Ribas, Carlos; Vidra, Kirk; Alves, Carlos; Lucas Hernandez do Vale Martins; marcel@infinityservices.com.br
Subject: RE: [EXT] Re: Brazil closure approval

Kris,

I am looping in Lucas and Marcel on this email. I just had a brief call with Lucas and he is aware that I may be unavailable for the next 24-48 hours. He is going to reach out to Marcel and you. I gave him my consent to approve the document once he and Marcel were aligned and comfortable. Talk soon



Andrew Levy, CEO
The Starboard Group of Companies

12540 West Atlantic Blvd.

Coral Springs, FL 33071

(954) 255-2266 ext. 102

From: Kaffenbarger, Kris <Kris.Kaffenbarger@wendys.com>
Sent: Saturday, December 28, 2019 1:23 PM
To: Andrew Levy <alevy@starboardwendys.com>
Cc: ckelleher@auspexcapital.com; Koumas, Peter <Peter.Koumas@wendys.com>; Green, Kerry <Kerry.Green@wendys.com>; Ribas, Carlos <Carlos.Ribas@wendys.com>; Vidra, Kirk <Kirk.Vidra@wendys.com>; Alves, Carlos <Carlos.Alves@wendys.com>
Subject: Re: [EXT] Re: Brazil closure approval

Sounds ok, how about a call at 4:00 pm ET?

Thanks,

Kris

From: Andrew Levy <alevy@starboardwendys.com>
Sent: Saturday, December 28, 2019 3:21:03 PM
To: Kaffenbarger, Kris <Kris.Kaffenbarger@wendys.com>
Cc: ckelleher@auspexcapital.com <ckelleher@auspexcapital.com>; Koumas, Peter <Peter.Koumas@wendys.com>; Green, Kerry <Kerry.Green@wendys.com>; Ribas, Carlos <Carlos.Ribas@wendys.com>; Vidra, Kirk <Kirk.Vidra@wendys.com>; Alves, Carlos <Carlos.Alves@wendys.com>
Subject: [EXT] Re: Brazil closure approval

Kris,

Thanks so much for the response. Somehow there is a disconnect here as I personally spoke to Lucas who was not happy with the document. By the time I reached him late Friday, he told me he had already spoken with Marcel and that they were both really uncomfortable with the document as written. Lucas also told me he had relayed his concerns to Inhe and that after he and I spoke he would reach out again to her to try to get this finalized.

I then spoke to Marcel late Friday evening and he told me at that point that he was not ok with this document and that Infinity had not approved the document.

I think the best thing here is to get all hands on the phone together today. When I spoke to Marcel and Lucas yesterday they both indicated they would be willing to work on this over the weekend. With your permission I would like to forward this email to Marcel and Lucas and set up an immediate call. I will take the lead on organizing things. I am in support of getting them closed on Monday assuming we can get Lucas and Marcel aligned. Please respond ASAP so I can get them on the line. I do not think this needs to be a huge obstacle rather I think we all need to communicate together and reach a decision that works for all. Thanks.

Sent from my iPhone

Andrew Levy

CEO

Starboard Group of Companies

12540 West Atlantic Blvd

Coral Springs, FL 33071

(954) 255-2266 ext 102

On Dec 28, 2019, at 12:39 PM, Kaffenbarger, Kris <Kris.Kaffenbarger@wendys.com> wrote:

Andrew,

Peter and I had a constructive discussion with Chris Kelleher last evening at 8:07 pm ET, possibly the two of you have not debriefed.

Responding to your text message at 11:37 am ET this morning. I appreciate your follow-up.

I've included the broader team here as some folks are traveling for the holidays.

On closing the Brazil restaurants and market, we have the Infinity partners alignment to proceed with closing. You have requested a few modifications to the promissory note that while we will discuss internally, we do not have access to the SLT members required to accept or decline your requests. We will address those requests after everyone returns from the holidays.

The dissolution of the business will require new cash via a loan to effectuate the winddown and closing. We plan to make that loan the lowest priority repayment and unsecured and stand ready to discuss a detailed dissolution plan next Monday or Tuesday.

We still need your approval to close the restaurants and the market. Peter and I have approved the team to proceed with closing, and we have alignment with Infinity. We believe this is the most prudent course for all parties, and hereby again request your approval to close the Brazil restaurants and market.

Please advise by responding to all.

Thanks,

Kris

Kris Kaffenbarger, CPA, CMA

Vice President, Global System Optimization, Franchise and Portfolio Management

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O: 614.764.8443 · M: 614.946.6160

E: Kris.Kaffenbarger@wendys.com

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From: Lucas Hernandez do Vale Martins <lucas@valemartins.com>
Date: December 30, 2019 at 9:08:22 AM MST
To: Andrew Levy <alevy@starboardwendys.com>
Cc: "marcel@infinityservices.com.br" <marcel@infinityservices.com.br>
Subject: Re: FW: Shutdown Wendys Brazil

Andrew,

We have not signed anything in here.

Indeed I have sent an e-mail to Wendy's team saying our requests, earlier today.

Wendy's USA has taken its decision and, as a matter of fact, it is good as a standpoint for our negotiations.

See from Patricia's e-mail below:

"As requested by Wendy's USA we are moving on with the shut down of the restaurants operated by Wendy's Brazil tomorrow (December 30th)."

I do also have content saying that and Marcel as well.

Wendy's USA position, if they try to do anything that was not agreed upon, is very delicate now.

Now I believe it is just a matter of language adjustment to complete all the procedures.

I doubt they will try to manipulate things now that it is very clear that was their sole decision to shut down the company as we have not signed anything yet.

Best Regards.

Lucas Hernandez do Vale Martins

Vale Martins - Advocacia

Rua Joaquim Floriano, 888 - Cj. 101

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Em seg., 30 de dez. de 2019 às 11:29, Andrew Levy <alevy@starboardwendys.com> escreveu:

I am confused. How did this happen? Did you guys reach an agreement with Wendy's?



Andrew Levy, CEO
The Starboard Group of Companies

12540 West Atlantic Blvd.

Coral Springs, FL 33071

(954) 255-2266 ext. 102

From: Patricia Guello <patricia.guello@wendysbrasil.com.br>

Sent: Monday, December 30, 2019 7:18 AM

To: Andrew Levy <alevy@starboardwendys.com>; 'Ribas, Carlos' (Carlos.Ribas@wendys.com)'
<carlos.ribas@wendys.com>; Marcel Gholmeh - Infinity <marcel@infinityservices.com.br>; Kevin Holbrook
<kholbrook@starboardwendys.com>; 'Alves, Carlos' <Carlos.Alves@wendys.com>

Subject: Re: Shutdown Wendys Brazil

Good morning,

Just to let you know, we've just concluded all the employee's termination.

Regards,

Patrícia

De: Patricia Guello

Enviado: domingo, 29 de dezembro de 2019 18:54

Para: Andrew Levy; 'Ribas, Carlos' (Carlos.Ribas@wendys.com); Marcel Gholmeh - Infinity; Kevin Holbrook; 'Alves, Carlos'

Assunto: Shutdown Wendys Brazil

Dear all,

As requested by Wendys USA we are moving on with the shut down of the restaurants operated by Wendys Brazil tomorrow (December 30th).

Tomorrow morning, we are going to communicate all employees and suppliers. After that, we have 10 days by law to do the payments of the employees' termination. It means that we have to receive the transfer from USA by January 7th. The delay of this payment can result in penalties and possible labor suits.

In January, we are going to return the stores to the landlords, sell the equipment, furniture and other fixed assets.

We are doing our best to minimize the cost of the closing and we are going to keep you updated on next steps.

Best regards,

Patrícia

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